ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Norma McCorvey, formerly known as JANE ROE,	§	
	§	
Plaintiff,	§	
	§	
V.	§	**CIVIL ACTION NOS. 3-3690-B**
	§	**AND 3-3691-C**
HENRY WADE, Through His Official Successor in Office, William "Bill" Hill, Dallas County District Attorney,	§	
	§	
Defendant.	§	

RULE 60 MOTION FOR RELIEF FROM JUDGMENT

TO THE HONORABLE COURT:

NOW COMES, NORMA MCCORVEY, formerly known in this Court as Jane Roe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and would respectfully show this Honorable Court the following:

1. Pursuant to Federal Rules of Civil Procedure, Rule 60(b)(5) and (6), Plaintiff files this Rule 60 Motion For Relief From Judgment. Plaintiff hereby seeks the relief of vacating this Court's previous judgment in favor of Plaintiff in this cause on the grounds it is no longer just or equitable to give it prospective application.

FACTUAL HISTORY AND PROCEDURAL BACKGROUND

2. On June 17, 1970, a three-judge court issued a ruling in this cause declaring the Texas

abortion laws that prohibited abortions except to save the life of the mother unconstitutional.[1] On January 22, 1973, the United States Supreme Court affirmed this Court's judgment.[2] On the same day, the United States Supreme Court also ruled in a companion case to *Roe*, *Doe v. Bolton*.[3]

3. The existing and prospective application of this Court's judgment and the subsequent affirmation of the Supreme Court prevent the state of Texas from enforcing its laws prohibiting abortion except to save the life of the mother.

REQUEST FOR THREE-JUDGE COURT

4. Plaintiff requests that this Motion be heard and determined by a three-judge court in accordance with 28 U.S.C.S. §§ 2281 and 2284. This cause of action was originally heard by a three-judge court in 1970 in accordance with 28 U.S.C.S. § 2281 which provided for a three-judge court for cases involving injunctions against enforcement of State statutes. Although 28 U.S.C.S. § 2281 was repealed by amendments to 28 U.S.C.S. § 2284, the repeal "shall not apply to any action commenced on or before the date of enactment [enacted Aug. 12, 1976]". 28 U.S.C.S. § 2284. This cause commenced before the date of enactment and involves an original cause of action seeking an injunction against the enforcement of a State statute. Furthermore, 28 U.S.C.S. § 2284 provides that when a three-judge court is required under federal statute "[a] single judge shall not...hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits." This Motion pursuant to Fed. R. Civ. P. 60(b) is seeking a final determination on the merits and accordingly the three-judge court should be re-convened to hear this Motion.

PARTIES

1. *Roe v. Wade*, 314 F.Supp. 1217 (1970) (hereinafter "*District Court Roe*").
2. *Roe v. Wade*, 410 U.S. 113 (1973) (hereinafter "*Roe*").

5. Plaintiff, Norma McCorvey, formerly known in this Court as Jane Roe, is the original Plaintiff herein, and an original party hereto.

6. Defendant, Henry Wade, is represented in this cause by and through his official successor in office, William "Bill" Hill, Dallas County District Attorney. The State of Texas entered as a party after receiving notice of intent to seek a declaration of the unconstitutionality of a state statute.

7. James Hubert Hallford was granted leave to intervene by the District Court. John and Mary Doe filed a companion complaint, cause no. 3-3691-C, and the two actions were consolidated and heard together.[4] Dr. Hallford and the Does were held not to have standing by the United States Supreme Court.[5]

REQUEST FOR EVIDENTIARY HEARING AND ORAL ARGUMENT

8. There has been a significant change in both the factual and legal landscape surrounding this cause of action since the three-judge court's original ruling in this case. Plaintiff Norma McCorvey is alleging both (1) significant changes in factual conditions and (2) significant changes in law which make if no longer just to continue the prospective application of *Roe.* With respect to the factual allegations, there must be a factual determination made, an opportunity for the presentation of evidence, and the development of a full record. A thorough hearing and development of an adequate fact-finding record is necessary in order for the Court and, in the event of an appeal, the appellate court, to make fully informed, intelligent and well-reasoned decisions. Appellate Courts do not conduct their own fact-finding hearings, they rely upon the lower courts to develop a proper record.

9. When considering a motion pursuant to Fed. R. Civ. P. 60(b), the "threshold

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3. 410 U.S. 179 (1973) (hereinafter "*Doe*").
4. 410 U.S. at 121-22.

issue" is whether the factual landscape has changed since the court's previous decision.[6] Factual matters should be decided by the trial court. The decisions of the Supreme Court in *Roe v. Wade* and *Doe v. Bolton* are obviously of tremendous national concern and importance. They remain as controversial today as they were when decided thirty years ago. The importance of these cases and the issues raised in Plaintiff's Motion for Relief From Judgment warrant a full and complete factual exposition of changed factual circumstances. Accordingly, pursuant to the Federal Rules of Civil Procedure, Plaintiff hereby requests an evidentiary hearing and oral argument before the three-judge court in order to present the evidence and legal authorities now available to the Court.

CASE LAW AND AUTHORITIES

10. Federal Rule of Civil Procedure 60(b)(5) and (6) provide:

> "(b) On motion and upon such terms as are <u>just</u>, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons:. . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is <u>no longer equitable</u> that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." [Emphasis added.]

11. The primary United States Supreme Court opinion which determines the proper legal standard for a court to follow when considering a motion pursuant to Fed. R. Civ. P. 60(b) is *Agostini v. Felton.*[7] In *Agostini,* twelve years after the Supreme Court held in *Aguilar v. Felton*[8] that the Establishment Clause barred the New York City Board of Education from sending public school teachers into parochial schools, the Board and parochial school children's parents filed a motion under Fed. R. Civ. P. 60(b)(5) seeking relief from the permanent injunction entered by

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5. 410 U.S. at 125-28.
6. *Agostini v. Felton,* 521 U.S. 203 (1997) (hereinafter "*Agostini*").
7. *Id.*

the Court in 1985. The Court found that a motion pursuant to Fed. R. Civ. P. 60(b) was procedurally sound and the appropriate vehicle for the parties to seek relief from a prior ruling of the Court.[9] The Court also found that the doctrines of *stare decisis* and the law of the case "...do(es) not preclude us from recognizing the change in our law and overruling *Aguilar* and those portions of *Ball* inconsistent with our more recent decisions."[10] "The doctrine does not apply if the court is 'convinced that [its prior decision] is clearly erroneous and would work a manifest injustice.'"[11]

12. In *Agostini,* the Court not only found that it had jurisdiction and authority to overrule their prior ruling in the same cause of action when considering a Fed. R. Civ. P. 60(b) motion, they also found that they had the authority to overrule a companion case to the current cause of action at bar.[12] Similarly, Plaintiff hereby requests that the Court not only overrule the prior decision in *Roe*, but also overrule the decision in the companion case hereto, *Doe.* Further, the evidence as presented herein and as Plaintiff will present at the evidentiary hearing and oral argument as requested herein will show that the prior decision of the Court is clearly erroneous and would work a manifest injustice if applied prospectively. Accordingly, under both Fed. R. Civ. P. 60(b) and *Agostini*, Plaintiff hereby requests that the prior ruling of the Court in this cause be vacated.

13. When considering a Fed. R. Civ. P. 60(b) motion, the Court determined in *Agostini* that the threshold issue to be decided is "whether the factual or legal landscape has changed since...[the prior ruling of the Court]."[13] In *Rufo v. Inmates of Suffolk County Jail*, 502 U.S.

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8. 473 U.S. 402 (1985).
9. 521 U.S. at 214.
10. *Agostini,* 521 U.S. 203; *School District of Grand Rapids v. Ball*, 473 U.S. 373 (1985)(the companion case to *Agostini*).
11. 521 U.S. at 236.
12. *See Agostini,* 521 U.S. 203.
13. 521 U.S. at 216.

367, 384 (1992), the Supreme Court held that it is appropriate to grant a Fed. R. Civ. P. 60(b) motion when the parties seeking relief can show, "a significant change either in factual conditions or in law. 'A Court may recognize subsequent changes in either statutory or decisional law.'" "The Court cannot be required to disregard significant changes in law or facts if it is satisfied that what it has been doing has been turned through changed circumstances into an instrument of wrong."[14] Either a change in law or factual circumstances is sufficient by itself.[15] Both need not be proven. There have been significant changes in both factual circumstances and law since the prior ruling of the Court in *Roe*. New factual and legal evidence since the Court's decision in *Roe* and its companion case, *Doe*, as presented herein, in the Brief in Support of this Motion (incorporated herein by reference), and as will be presented to the Court at the evidentiary hearing requested by Plaintiff, now establishes that *Roe* and *Doe* have become an "instrument of wrong".[16] Accordingly, under Fed. R. Civ. P. 60(b) and current United States Supreme Court case law as cited herein, it is no longer just or equitable to give the *Roe* and *Doe* decisions prospective application.

CHANGES IN LAW

14. There have been significant changes in both decisional law and statutory law since the Court's original ruling in this case. The three-judge court in the original cause of action in *District Court Roe* herein declared the Texas abortion statutes void as vague and overbroad, infringing upon Plaintiffs' Ninth and Fourteenth Amendment rights. The District Court found that if the right to procure an abortion is based upon the right to privacy under the Ninth and Fourteenth Amendments to the United States Constitution, then abortion is a fundamental liberty interest that the state could only infringe upon if there was an existing compelling state interest.

14. *Railway Employees v. Wright*, 364 U.S. 642, 647 (1961).
15. 521 U.S. at 214.

Id. In *Roe*, the Supreme Court found that the state has a legitimate interest in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term.[17]

15. Since the original ruling of this Court and the United States Supreme Court in *Roe*, the Supreme Court has issued opinions in a number of subsequent cases that have significantly undermined the legitimacy of its ruling in *Roe*. *Webster v. Reproductive Services*[18], began the subsequent erosion of *Roe*, while not overruling it directly. The *Webster* ruling first allowed a state to favor childbirth over abortion and provided for viability testing, stating, "[t]here is no doubt our holding today will allow some governmental regulation of abortion that would have been prohibited..." under prior decisions.[19]

16. The *Casey*[20] decision further undermined *Roe*. The *Casey* opinion elevated society's profound interest in "potential" life[21]. Furthermore, the plurality opinion in *Casey* rejected *Roe's* classification of abortion as a fundamental right requiring strict scrutiny, stating, "[w]e acknowledge that our decisions after *Roe* cast doubt upon the meaning and reach of its holding."[22]

17. The over-expansive definition of "fundamental liberty interest" set forth in *Roe*, and even *Casey*, has been rejected by subsequent decisions of the Supreme Court. Specifically, in *Washington v. Glucksberg*[23] the Court's decision changed the underlying test used to determine which rights asserted by litigants should be ranked as "fundamental liberty interests" that are Constitutionally protected. In *Glucksberg,* a physician filed suit in federal court, claiming

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16. *See Railway Employees v. Wright*, 364 U.S. 642 (1961).
17. 410 U.S. at 162-63.
18. *Webster v. Reproductive Services,* 492 U.S. 490 (1989) (hereinafter referred to as "*Webster*").
19. 492 U.S. at 520-21.
20. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (hereinafter referred to as "*Casey*").
21. *Id.*
22. *Casey at 845.*

Washington's law banning assisted suicide violated his and his patient's Fourteenth Amendment liberty interest in determining the time and manner of one's death.[24] The *Glucksberg* Court established a new, two-prong test to enumerate which rights are so "implicit in the concept of ordered liberty"[25] as to be considered "fundamental" and therefore Constitutionally protected. To be considered a fundamental liberty interest, the Supreme Court held that the right in question must:

(1) find a cognizable basis in the Constitution's language or design[26]; and
(2) be "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[27]

18. The *Glucksberg* Court found that there is no fundamental liberty interest to determine the time and manner of one's death because: (1) "[the] right to assisted suicide finds no cognizable basis in the Constitution's language or design"[28]; and the "right to die" is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[29] Applying the *Glucksberg* test directly to the case at bar, the right to procure an abortion (1) finds no cognizable basis in the Constitution's language or design, and (2) is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Id.* To the contrary, the *Roe* Court itself indicated that "[t]he Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century."[30] If anything, the regulation of abortion, rather than the right to procure an abortion, is "rooted in the traditions and conscience

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23. *Washington v. Glucksberg*, 521 U.S. 702 (1997) (hereinafter referred to as "*Glucksberg*").
24. *Id.*
25. *See Palko v. Connecticut*, 302 U.S. 319, 325 (1937).
26. 521 U.S. at 723, n. 18 (*quoting Vacco,* 80 F.3d 716 (1997)).
27. 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).
28. 521 U.S. at 723, n. 18 (*quoting Vacco*, 80 F.3d 716 (1997)).
29. 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).
30. 410 U.S. at 116.

of our people"[31] as evidenced by a century of statutes prohibiting the same. In light of such dramatic changes in decisional law, if this original cause of action were decided today, under the *Glucksberg* standard, the Texas abortion statutes should be upheld as Constitutionally sound. Based upon these subsequent changes in decisional law, there is no fundamental liberty interest to procure an abortion and it would be error for the Court to refuse to grant this Motion pursuant to Fed. R. Civ. P. 60(b) in light of such changes.[32] "It would be anomalous if the results reached under a constitutional standard remained binding after the standard or test was repudiated."[33]

19. Extremely significant changes in the law of federalism have occurred in Supreme Court decisions in recent years which would justify returning the decision whether to allow or prohibit abortion to the states.[34] Before *Roe* federalized the issue, women and family health and safety issues, and specifically abortion, were traditional state and local concerns.[35] With the re-emergence of federalism in recent landmark decisions, the Supreme Court has moved this critical area of constitutional jurisprudence to the forefront of federal judicial review. Beginning with *United States v. Lopez*, this movement represents a renewed emphasis on the judicial enforcement of the constitutional federalism boundary lines.[36] While the Court has largely focused on Congress in *Lopez* and its progeny, the *doctrine of federalism* applies to the dangers of overreaching national power among all branches of government, including the Supreme Court itself. In fact, "the danger to federalism may be greater from the federal courts than from Congress simply because judicial intervention is anti-democratic" such that "the states have

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31. 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).
32. *See Agostini.*
33. *Planned Parenthood v. Casey*, 947 F.2d 682 (1991).
34. *See*, e.g., U.S. *v. Lopez,* 514 U.S. 549 (1995) *U.S. v. Morrison,* 529 U.S. 598 (2000), *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114 (1995). (Need more cases here.)
35. 410 U.S. at 139, 140 n. 34-37; 492 U.S. at 520 ("areas of medical practice traditionally subject to state regulation").
36. 514 U.S. 549 (1995); *U.S. v Morrison*, 529 U.S. 598 (2000), *Seminole Tribe of Florida v Florida*, 517 U.S. 44 (1995).

relatively little recourse."[37] The common thread among the line of federalism cases involves the court's restriction of expansion of national power into traditional state law matters such as education, crime, family law and health issues, which abortion clearly involves.

20. Yet *Roe* is now completely contrary to this new line of cases. The Court's application of *Lopez* federalism to *Roe* could not only properly return this traditional state law matter to the states, but it could also restore the democratic processes needed on this issue of great controversy.[38] Therefore, in reversing *Roe*, the Court would be correcting excessive judicial intervention in these cultural clashes which can stoke great public resentment, politicize the courts themselves, and impede the abiding progress that comes from democratic governance.[39] The *Roe* decision has politicized every presidential election and Supreme Court nomination since its decision and will do so until it is overruled and this issue is returned to the states and the people for democratic regulation.

21. In addition to the considerable changes in decisional law outlined above, there have also been significant changes in statutory law since the Court's original ruling in *Roe*. The overwhelming majority of states now permit some form of recovery for the loss of a child in the womb. For example, approximately ten states and the District of Columbia recognize a common law cause of action for mental anguish suffered as a result of the loss of a child in the womb.[40]

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37. J. Harvie Wilkinson III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future*, 74 S. CAL. L. REV. 523, 536 (2001).
38. *See* Plaintiff's Brief in Support of Rule 60 Motion for Relief From Judgment.
39. *See* Justice Scalia bemoaning "carts full of mail" and "demonstrators" outside the Supreme Court, *Webster,* 492 U.S. at 535, (concurring in part and concurring in judgment).
40. *Krishnan v. Sepulveda;* 916 S.W. 2d 478 at 480-81, n.2 (1995), citing *Modaber v. Kelley*, 232 Va. 60, 348 S.E.2d 233, 237 (Va. 1986); *Giardina v. Bennett*, 111 N.J. 412, 545 A.2d 139, 140-42 (N.J. 1988); *Johnson v. Ruark Obstetrics and Gynecology Associates, P.A.*, 327 N.C. 283, 395 S.E.2d 85, 98-99 (N.C. 1990); *Hilsman v. Winn Dixie Stores, Inc.*, 639 So. 2d 115, 117 (Fla. App. 1994); *McGeehan v. Parke-Davis*, 573 So. 2d 376, 376-78 (Fla. App. 1991); *Prado v. Catholic Medical Center of Brooklyn and Queens, Inc.*, 145 A.D.2d 614, 536 N.Y.S.2d 474, 475 (N.Y. App. Div. 1988); *District of Columbia v. McNeill*, 613 A.2d 940, 942-44 (D.C. 1992); *Seef v. Sutkus*, 205 Ill. App. 3d 312, 562 N.E.2d 606, 608-09, 150 Ill. Dec. 76 (Ill. App. 1990); *Milton v. Cary Medical Center*, 538 A.2d 252, 256 (Me. 1988); *Amadio v. Levin*, 509 Pa. 199, 501 A.2d 1085, 1088-89 (Pa. 1985); *Vaillancourt v. Medical Center Hosp. of Vermont*, 139 Vt. 138, 425 A.2d 92, 95 (Vt. 1980); *Johnson v. Superior Court of Los*

Illinois, North Carolina, Pennsylvania, Vermont and the District of Columbia recognize a common law cause of action for mental anguish suffered as a result of the death of an unborn child and a wrongful death cause of action for the death of a viable fetus. However, several states that recognize a common law cause of action for mental anguish suffered as a result of the death of an unborn child do not recognize a wrongful death cause of action for the death of a viable fetus.[41] It is important to note that most of these states characterize a viable fetus as a "person" or "minor child" under their wrongful death statutes.

22. Another significant statutory change since the original decision of the Court in this cause of action is the new Texas law providing that a woman can simply abandon an "unwanted" child at a hospital, clinic or emergency room within sixty (60) days of birth with no questions asked and no threat of criminal prosecution.[42] Because of this new law, there is no longer a need

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Angeles Cty., 123 Cal. App. 3d 1002, 177 Cal. Rptr. 63, 65 (Cal. App. 1981).

41. *See Eich v Town of Gulf Shores*, 293 Ala. 95, 300 So. 2d 354, 358 (Ala. 1974); *Summerfield v. Superior Court of Maricopa Cty.*, 144 Ariz. 467, 698 P.2d 712, 724 (Ariz. 1985); *Hatala v. Markiewicz*, 26 Conn. Supp. 358, 224 A.2d 406, 407-08 (Conn. Super. Ct. 1966); *Worgan v. Greggo & Ferrara, Inc.*, 50 Del. 258, 128 A.2d 557, 558 (Del. Super. Ct. 1956); *Greater Southeast Community Hosp. v. Williams*, 482 A.2d 394, 397-98 (D.C. 1984); *Porter v. Lassiter*, 91 Ga. App. 712, 87 S.E.2d 100, 103 (Ga. App. 1955); Wade v. U. S., 745 F. Supp. 1573, 1579 (D. Hawaii 1990); *Volk v. Baldazo*, 103 Idaho 570, 651 P.2d 11, 15 (Idaho 1982); *Chrisafogeorgis v. Brandenberg*, 55 Ill. 2d 368, 304 N.E.2d 88, 91-92 (Ill. 1973); *Britt v. Sears*, 150 Ind. App. 487, 277 N.E.2d 20, 26-27 (Ind. App. 1971); *Dunn v Rose Way, Inc.*, 333 N.W.2d 830, 833-34 (Iowa 1983); *Hale v. Manion*, 189 Kan. 143, 368 P.2d 1, 3 (Kan. 1962); *Mitchell v. Couch*, 285 S.W.2d 901, 906 (Ky. 1955); *Danos v. St. Pierre*, 402 So. 2d 633, 639 (La. 1981); State ex rel. *Odham v. Sherman*, 234 Md. 179, 198 A.2d 71, 73 (Md. 1964); *Mone v. Greyhound Lines, Inc.*, 368 Mass. 354, 331 N.E.2d 916, 920 (Mass. 1975); *O'Neill v. Morse*, 385 Mich. 130, 188 N.W.2d 785, 786 (Mich. 1971); *Verkennes v. Corniea*, 229 Minn. 365, 38 N.W.2d 838, 841 (Minn. 1949); *Rainey v. Horn*, 221 Miss. 269, 72 So. 2d 434, 439-40 (Miss. 1954); *O'Grady v. Brown*, 654 S.W.2d 904, 911 (Mo. 1983); *White v. Yup*, 85 Nev. 527, 458 P.2d 617, 623-24 (Nev. 1969); *Poliquin v. MacDonald*, 101 N.H. 104, 135 A.2d 249, 251 (N.H. 1957); *DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489, 495 (N.C. 1987); *Salazar v. St. Vincent Hosp.*, 95 N.M. 150, 619 P.2d 826, 830 (N.M. App. 1980); *Hopkins v. McBane*, 359 N.W.2d 862, 865 (N.D. 1984); *Werling v. Sandy*, 17 Ohio St. 3d 45, 476 N.E.2d 1053, 1056 (Ohio 1985); *Evans v. Olson*, 550 P.2d 924, 927-28 (Okla. 1976); *Libbee v. Permanente Clinic*, 268 Ore. 258, 518 P.2d 636, 640 (Or. 1974); *Amadio v. Levin*, 509 Pa. 199, 501 A.2d 1085, 1089 (Pa. 1985); *Presley v. Newport Hosp.*, 117 R.I. 177, 365 A.2d 748, 754 (R.I. 1976); Cert. of Question of Law from U.S. Dist. Ct., 387 N.W.2d 42, 45 (S.D. 1986); S.D. Codified Laws § 21-5-1 (1987); *Fowler v. Woodward*, 244 S.C. 608, 138 S.E.2d 42, 45 (S.C. 1964); Tenn. Code § 20-5-106 (1994); *VaillanCourt v. Medical Center Hosp. of Vermont*, 139 Vt. 138, 425 A.2d 92, 95 (Vt. 1980); *Moen v Hanson*, 85 Wash. 2d 597, 537 P.2d 266, 268 (Wash. 1975); *Baldwin v. Butcher*, 155 W. Va. 431, 184 S.E.2d 428, 436 (W. Va. 1971); *Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14, 148 N.W.2d 107, 112 (Wis. 1967). But *see Justus v. Atchison*, 19 Cal. 3d 564, 565 P.2d 122, 132-33, 139 Cal. Rptr. 97 (Cal. 1977); *Kuhnke v. Fisher*, 210 Mont. 114, 683 P.2d 916, 919 (Mont. 1984); *Egbert v. Wenzl*, 199 Neb. 573, 260 N.W.2d 480, 482 (Neb. 1977).

42. Tex. Fam. Code Ann. §§ 262.301 – 262.303, and § 262.105; Texas Penal Code §22.041(h).

to seek an abortion to avoid any "unwanted" burdens of motherhood. The effect is that the state of Texas will help the mother and is willing to assume all of the responsibilities, financial and otherwise, of raising the child. Since the Texas statute providing for dropping off an "unwanted" child was pioneered, at least forty (40) other states have enacted similar legislation.[43] In addition, Texas, along with all other states, will pay for medical expenses associated with pregnancy for the needy. The Supreme Court in *Roe* was concerned with imposing upon the mother:

> "a distressful life and future...psychological harm...mental and physical health may be taxed by child care...the distress for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it."[44]

At the time *Roe* was decided, the laws providing for all medical expenses associated with pregnancy for the poor and allowing any mother to let the state bear all burden associated with raising a child did not exist, and the Court could not have known that any such law would ever be enacted. The burdens the Court was concerned about being imposed upon a mother are no longer legally hers should she choose not to bear them. In light of such a dramatic change in law, the *Roe* decision is no longer based on sound legal or factual circumstances.

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43. *See* Ala. Code § 26-25-1 *et seq.* (2000); Ariz. Rev. Stat. § 13-3623.01 (2001); Ark. Code Ann. § 9-34-202 (Michie 2001); Cal. Health & Safety Code § 1255.7 (Deering 2000); Colo. Rev. Stat. § 19-3-304.5 (2000); Conn. Gen. Stat. § 17a-57 *et seq.* (2000); Del. Code Ann. tit. 16 § 907A (2001); Fla. Stat. Ann. § 383.50 *et seq.* (West 2000); Ga. Code Ann. § 19-10A-1 *et seq.* (2002); Idaho Code § 39-8201 *et seq.* (2001); § 325 Ill. Comp. Stat. 2/1 *et seq.* (West 2001); Ind. Code § 31-34-2.5-1 *et seq.*(Michie 2000); Iowa Code §233.1 *et seq.* (2001); Kan. Stat. Ann. § 38-15,000 (2000); Ky. Rev. Stat. Ann. § 405.075 (2002); La. Ch. Code art. 1701 *et seq.* (West 2000); Me. Rev. Stat. Ann. tit.17-A § 553 (2002); Md. Code Ann. Cts. & Jud. Proc. § 5-641 (2002); Mich. Comp. Laws § 750.135 (2000); Minn. Stat. § 145.902 (2000); Miss. Code Ann. § 43-15-201 *et seq.* (2001); Mo. Rev. Stat. § 210.950 (2002); Mont. Code Ann. § 40-6-401 *et seq.* (2001); N.Y. Penal § 260.03; Penal § 260.15; and, Soc. Serv. § 372-g (2000); N.C. Gen. Stat. § 7B-500 (2001); N.D. Cent. Code § 50-25.1-15 (2001); Ohio Rev. Code Ann. § 2151.3515 *et seq.* (Anderson 2001); Okla. Stat. tit. 10 § 7115.1 (2001); Or. Rev. Stat. § 418.017 (2001); Pa. Stat. Ann. tit. 23 § 6501 *et seq.* (2002); R.I. Gen. Laws § 23-13.1-1 *et seq.* (2001); S.C. Code Ann. § 20-7-85 (2000); S.D. Codified Laws § 25-5A-27 *et seq.* (Michie 2001); Tenn. Code Ann. § 68-11-255 (2001); Tex. Fam. Code Ann. § 262.301 *et seq.* (West 1999); Utah Code Ann. § 62A-4a-801 *et seq.* (2001); Wash. Rev. Code § 13.34.260 (2002); W. Va. Code § 49-6E-1 *et seq.* (2000); Wis. Stat. Ann. § 49.192 (West 2001); Wyo. Stat. Ann. § 14-11-101 *et seq.* (Michie 2003). *See generally* Baby Moses Project at www.babymosesproject.org.

44. 410 U.S. at 153.

FACTUAL CHANGES

23. In addition to the significant changes in decisional and statutory law since the original ruling of the Court in this cause, there have also been dramatic changes in factual circumstances and available scientific knowledge. Just as *Brown v. Board of Education*,[45] overturned *Plessy v. Ferguson*,[46] because subsequent facts showed that "separate but equal" had become inherently unjust, the new facts revealed in this Motion (in the Brief in Support of this Motion, and which will be revealed in full detail at the evidentiary hearing requested herein) demonstrate that *Roe* is no longer just, but inherently unjust, and provide the decisional basis for the Court to vacate their previous ruling in this cause.

24. At the time of the *Roe* decision, the Court stated that scientific, philosophical, and religious reasoning had not been able to determine when human life begins. The Court stated:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[47]

In previous decisions, the Court has treated the question of when human life begins as a matter of opinion, belief, or a point of view because it has never been presented with clear and compelling scientific evidence which allows the matter to be resolved objectively rather than through opinion. New scientific and medical evidence and advances in technology since 1973, as described herein and as will be more thoroughly presented at the evidentiary hearing requested in this cause, clearly demonstrate that human life begins at conception and therefore the previous ruling in this cause should be vacated as it would be unjust to have prospective application.[48]

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45. 247 U.S. 483 (1954).
46. 163 U.S. 537 (1896).
47. 410 U.S. at 181.
48. *See* Scientific and Medical Analysis attached hereto in Appendix, Tab H, pp. 5197-5347; *See also Agostini.*

25. An explosion of medical and scientific knowledge regarding the humanity of the unborn child has occurred since the Court's original ruling in *Roe.* Advances in ultrasound technology now make it possible to see even the eyebrows and eyelashes of unborn children. It is now possible to successfully perform in-utero surgery on an unborn child at very early stages of pregnancy. The viability date of unborn children has continued to advance year after year. Improvements in neo-natal medical technology now make it possible for dramatically premature infants to live when just a few years ago they would not have survived. When considering a mother and her unborn child, the fact that the Court is dealing with two persons can be very clearly and solidly proven. DNA technology, previously unavailable to the Court, can remove any doubt in this regard. If a DNA sample from the mother's arm and one from her child in the womb are sent anonymously to a DNA testing lab for identification, the lab will report that two separate humans are reflected in the samples. If samples from the mother's arm and leg, parts of her "own body" were sent, testing would show only one person is involved, the same person.

26. In addition, the Court in *Roe* made a non-evidence based assumption that an idealized or even normal doctor-patient relationship would exist between a woman seeking an abortion and the physician to perform the abortion.[49] That assumption is belied by the actual practices of the abortion industry since 1973. The real life experiences of the women that have had abortions and the individuals that have worked in abortion clinics since 1973 now shows that the abortion industry does not adequately protect women.[50] The Affidavits attached hereto, the Brief in Support of this Motion, and the testimony to be presented at the evidentiary hearing

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49. 410 U.S. at 166.

50. *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp. 1-14; *see also* the Affidavits of more than one thousand Post-Abortive Women (hereinafter the "Women's Affidavits"), attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also*

requested herein reveals new factual evidence that the abortion industry does not provide women with the protections of a true doctor-patient relationship, fails to provide women with the information necessary to truly make an informed decision regarding the procedure, fails to maintain the normal standards of health, safety, and professionalism required of medical personnel, regularly misleads or deceives women regarding the nature and development of their unborn children, and generally fails to adequately protect the mental and physical safety of women.[51]

27. New factual evidence regarding the physical and mental consequences of abortion on women, the result of more than thirty years of legalized abortion, is also available to the Court. Plaintiff Norma McCorvey never experienced an abortion herself. Norma McCorvey's baby in *Roe* was born and placed for adoption before the Supreme Court decision in *Roe* took effect.[52] Having never experienced an abortion, Plaintiff McCorvey was merely making assumptions as to the effect of abortion on herself, just as the Court did. Neither the Plaintiff herein nor the Supreme Court in 1973 could truly know beforehand what the effects of widespread legalization would be for women. Abortion was mostly rare and illegal in 1973.[53] As the attached Affidavit of Plaintiff and the Women's Affidavits reveal, assuming what an abortion is like and actually experiencing an abortion are two very different things, both physically and mentally.[54]

28. In addition to the testimony of Plaintiff Norma McCorvey (both in the attached Affidavit and her live testimony to be given at the evidentiary hearing requested herein), the attached Women's Affidavits from more than one thousand Post-Abortive Women are the largest body of direct, sworn, factual evidence about the effects of abortion on women that has ever been

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the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.
51. *Id.*
52. *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp. 1-14.
53. 410 U.S. at 118, n. 2.

presented to the United States Courts. This large body of new factual evidence was not available to this Court, the Supreme Court or Norma McCorvey in 1973.[55]

29. The Women's Affidavits, the Brief in Support of this Motion, and the new factual evidence and testimony previously unavailable to the Court that will be presented at the evidentiary hearing requested herein reveal:

a) that abortion is inherently unlike any other medical procedure and the long-term physical and mental effects are devastating to women;
b) the mental and emotional consequences of abortion include increased likelihood of attempting suicide, increased rate of chemical abuse and addiction, depressive disorders, anxiety disorders, promiscuity, self-destructive behavior including self-mutilation and repeated abortions, food related disorders including anorexia and bulimia, phobias and many other severe emotional and mental disorders and suffering;
c) that abortion dramatically increases the likelihood of developing breast cancer, pelvic inflammatory disease, infertility, complications in later pregnancies, miscarriage, uterine perforations, tubal or ectopic pregnancies, placenta previa, and a number of other physical complications;
d) that abortion is often not a voluntary decision but is the result of pressure and coercion from one or more individuals or outside circumstances;
e) that the normal protections of a physician-patient relationship are absent in the context of abortion;
f) that abortion is usually performed with a lack of informed consent from the patient.[56]

In light of these new facts, and others, that were not known or anticipated by the Court at the time of its original ruling, the prospective application of the decisions in *Roe* and *Doe* would be inherently unjust. It is just that the Court's judgment be vacated.

30. New facts, previously unavailable to the Court have been revealed regarding the

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54. *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp.1-14; *see also* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
55. *Id.*
56. *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp.1-14; *see also* the Affidavits of more than one thousand Post-Abortive Women (hereinafter the "Women's Affidavits"), attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D, Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

decision made in *Doe v. Bolton* as well. Sandra Cano was the "Mary Doe" of *Doe v. Bolton,* the companion case to *Roe*. The attached Affidavit of Sandra Cano reveals new facts regarding her case that were previously unavailable to the Court. [57] Her Affidavit shows that serious fraud was committed upon the Supreme Court in her case. The affidavit of Sandra Cano reveals facts which if known at the time would probably have prevented the Supreme Court from erroneously creating the "health" exception to *Roe's* trimester framework. Her affidavit demonstrates her own desire that the decision in her case be overturned.[58]

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Norma McCorvey respectfully prays for the following relief:

a. the immediate re-convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284;

b. an evidentiary hearing and oral argument before the three judge court;

c. an order by the three judge court that the judgment heretofore entered in favor of Plaintiff is vacated in light of changed law and factual conditions because it is no longer just or equitable to give it prospective application; and

d. such other and further relief as this Honorable Court may deem just and proper.

APPENDIX:

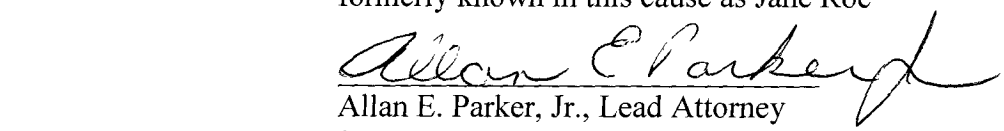
Tab A	–	**Affidavit of Plaintiff Norma McCorvey, pp. 1-14**
Tab B	–	**Affidavits of More Than One Thousand Post-Abortive Women (Referred to Herein as "Women's Affidavits"), pp. 15-1410**
Tab C	–	**Affidavit of Sandra Cano, the "Doe" of *Doe v. Bolton*, pp. 1411-1421**

57. *See* Affidavit of Sandra Cano, attached hereto in the Appendix, Tab C, pp. 1411-1421.
58. *Id.*

Tab D	–	**Affidavit of Theresa Burke, Ph. D., pp. 1422-1667**
Tab E	–	**Affidavit of David Reardon, Ph.D., pp. 1668-1804,**
		Exhibits to Affidavit of David Reardon, Ph.D., pp. 1805-4307
Tab F	–	**Client Intake Records from Pregnancy Care Centers, pp. 4308-5188**
Tab G	–	**Affidavit of Carol Everett, Former Abortion Provider, pp. 5189-5196**
Tab H	–	**Scientific And Medical Analysis, pp. 5197-5347**

Respectfully Submitted,

THE JUSTICE FOUNDATION
(Formerly Texas Justice Foundation, and still doing business in Texas as Texas Justice Foundation)
Attorneys for Plaintiff Norma McCorvey, formerly known in this cause as Jane Roe



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CERTIFICATE OF SERVICE

A true copy of the above and forgoing has been hand-delivered to: the Texas Attorney General, 300 W. 15th Street, Austin, Travis County, and the District Attorney for Dallas County, Frank Crowley Courts Building, 133 N. Industrial Blvd. LB19, Dallas, Dallas County, Texas.

SIGNED on this the 17th day of June, 2003.

Allan E. Parker, Jr.

CERTIFICATE OF CONFERENCE

I hereby certify that on June 12 and 13, 2003, I had a telephone conference with Ted Cruz, Solicitor General for the State of Texas regarding this Motion. An agreement could not be reached, and therefore a hearing on this matter will be required.

I hereby certify that I contacted the office of Bill Hill, District Attorney for Dallas County, Texas, on June 13 and June 16, 2003. ~~We were/were not able to reach an agreement regarding this Motion.~~ Bill Hill neither agreed to nor opposed this Motion.

SIGNED on this the 17th day of June, 2003.

Allan E. Parker, Jr.